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APPLICATION NO	FILING DATE	FIRST NAME D INVENTOR	ATTORNEY DOCKET NO	CONFIRMATION NO
09 614,317	07 12 2000	Donald F. Weder	8403 052	2284

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EXAMINER

GELLNER, JEFFREY L.

ART UNIT PAPER NUMBER

3643

DATE MAILED: 09 30 2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/614,317

Applicant(s)

09614317

Examiner

Jeffrey L. Gellner

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 18 February 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) 16-30 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12, 14 and 15 is/are rejected.
- 7) ☒ Claim(s) 13 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

Acknowledgement if Applicant's IDS entered 12 July 2000 entered 12 July 2000.

#### ***Election/Restrictions***

Applicant's election without traverse of Group I, Claims 1-15, in Paper No. 6 is acknowledged. Claims 16-30 are withdrawn from examination. The restriction is made final.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1,2, 4-7, 9, 14, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bachman et al. (US 3,767,104; document BY on Applicant's 1449) in view of Weder (US 4,297,811; document CJ on Applicant's 1449).

As to Claims 1 and 2, Bachman et al. discloses a preformed flexible sleeve (12 of Figs. 1 and 2; col. 1 line 6) comprising a first panel (Fig. 1 - seen by reader); a second panel (Fig. 2 - not seen by reader); a first side (in Fig. 1 the side with leadline of 12) and a second side ((in Fig. 1 the side without leadline of 12); the flexible sleeve having an upper end (14 of Fig. 1) tapering to a closed lower end (13 of Fig. 3), the first and second sides having an angle therebetween from about 16° to about 30° (Examiner calculated the angle between the sides from the Fig. on the first page of the patent to be 30°). Not disclosed is an adhesive disposed upon the inter surfaces

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of the panels. Weder ('811), however, discloses adding adhesive (col. 2 lines 36-37) to a sleeve for a flower pot. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the sleeve of Bachman et al. by adding an adhesive on the inside panels of the sleeve as disclosed by Weder ('811) so as to attach the disc (15) more securely to the sleeve.

As to Claim 4, Bachman et al. as modified by Weder ('811) further disclose the sleeve tip conical (13 of Fig. 1 of Bachman et al.).

As to Claims 5 and 7, the limitations of Claim 1 are disclosed as described above. Not disclosed is the upper end having a non-linear edge. Examiner takes official notice that it is old and notoriously well known in the retail nursery art to have floral sleeves with non-linear upper edges where the upper edge is positioned near the rim of a pot in the sleeves. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the sleeve of Bachman et al. as modified by Weder ('811) by adding a non-linear upper edge and to position a pot so that the rim is near the edge depending upon consumer tastes .

As to Claim 6, Bachman et al. as modified by Weder ('811) further disclose the sleeve sized to contain a pot (see Fig. 1 of Bachman et al.).

As to Claim 9, Bachman et al. as modified by Weder ('811) further disclose the adhesive positioned on the sleeve in a location where it would connect to a pot when a pot is placed in the sleeve (if disc is removed and when a pot is placed in the sleeve the adhesive could align with the pot's outer surface).

As to Claim 14, Bachman et al. as modified by Weder ('811) further disclose the sleeve made of paper (Bachmann et al. at col. 1 lines 48-50).

As to Claim 15, Bachman et al. as modified by Weder ('811) further disclose the sleeve from .1 to 30 mils (Bachmann et al. at col. 2 lines 40-44).

Claims 3 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bachman et al. (US 3,767,104; document BY on Applicant's 1449) in view of Weder (US 4,297,811; document CJ on Applicant's 1449) in further view of Landau (US 5,443,670; document DT on Applicant's 1449).

As to Claim 3, the limitations of Claim 1 are disclosed as described above. Not disclosed is the angle of the sides from 16° to 24°. Landau, however, discloses a floral sleeve with an angle of 20° (Examiner's measurement of angle of sleeve on patent's first page). It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the sleeve of Bachman et al. as modified by Weder ('811) by making the bottom angle from 16° to 24° as disclosed by Landau so as to suit consumer demand.

As to Claim 8, the limitations of Claim 1 are disclosed as described above. Not disclosed is the sleeve having an initial flattened position. Landau, however, discloses the sleeve with a flattened initial condition (see Fig. 2 of Landau). It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the sleeve of Bachman et al. as modified by Weder ('811) by having a sleeve with a flattened initial condition as disclosed by Landau so as to reduce storage requirements.

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Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bachman et al. (US 3,767,104; document BY on Applicant's 1449) in view of Weder (US 4,297,811; document CJ on Applicant's 1449) in further view of Hollmann (DE 3601207 A1).

As to Claim 10, the limitations of Claim 1 are disclosed as described above. Not disclosed is the sleeve with gussets on the first and second sides. Hollmann, however, discloses a sleeve with side gussets (see Fig. 9). It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the sleeve of Bachman et al. as modified by Weder ('811) by adding gussets to the first and second sides so as to increase the size of the sleeve.

Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bachman et al. (US 3,767,104; document BY on Applicant's 1449) in view of Weder (US 4,297,811; document CJ on Applicant's 1449) in further view of Landau (US 5,235,782; document DI on Applicant's 1449).

As to Claim 11, the limitations of Claim 1 are disclosed as described above. Not disclosed is a detachable upper portion detachable via perforations. Landau, however, discloses a detachable upper portion (28 of Fig. 1) detachable via perforations 26 of Fig. 1). It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the sleeve of Bachman et al. as modified by Weder ('811) by having a detachable upper portion with perforations as disclosed by Landau so as to hang the sleeves before use (see Landau col. 3 lines 28-33).

As to Claim 12, Bachman et al. as modified by Weder ('811) as further modified by Landau further disclose the detachable upper portion sized to substantially surround and encompass a floral grouping (see Fig. 2).

***Allowable Subject Matter***

Claim 13 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Weder et al. ('401), Weder ('601), Gilbert ('903), Amberg ('633), Weder ('476), Whelan ('631), Shapiro ('573), Merta ('920), Amberg et al. ('010), JP2-138948, JP2000-257131, JP2000-210038, and WO 96/33920 disclose in the prior art various sleeves the bottom angles between 16° and 40°.

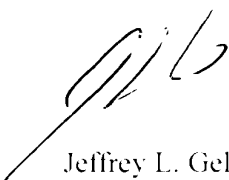
Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Jeffrey L. Gellner whose phone number is 703.305.0053. The Examiner can normally be reached Monday through Thursday from 8:30 am to 4:00 pm. The Examiner can also be reached on alternate Fridays.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Peter Poon, can be reached at 703.308.2574. The fax phone numbers for the


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Technology Center where this application or proceeding is assigned are 703.305.7687,  
703.305.3597, and 703.306.4195.

Any inquiry of a general nature or relating to the status of this application or proceeding  
should be directed to the receptionist whose telephone number is 703.308.1113.



Jeffrey L. Gellner



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